

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 470 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
Nos. 1 to 5 No

BABULAL PARSHOTTAM

Versus

GHELABHAI MADHABHAI SORATHIYA

Appearance:

MR SURESH M SHAH for Petitioner

NOTICE SERVED for Respondent No. 1, 7, 8

MR MEHUL S SHAH for Respondent No. 6

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/08/98

ORAL JUDGEMENT

This revision under section 115 of the Code of Civil Procedure is directed against the order dated 27.3.1992 of the Executing Court rejecting the application of the revisionist containing two objections to the sale proceedings. Shri Mehul S.Shah appears for

the revisionist and respondent No.6. Other respondents are served but they are absent. None appears on their behalf.

After hearing learned Counsel for the revisionist and examining the application of the revisionist moved in the executing court and further after examining the impugned order there can be no hesitation in observing that the Executing Court has failed to exercise jurisdiction vested in it by law and has also improperly exercised jurisdiction vested in it by law in passing the impugned order.

The application shows that two objections were raised to the sale proceedings. Para 2 of the application was rightly not considered by the Executing Court. The questions and objections raised in this para could not be decided by the Executing Court as these objections were pre decree matter which could not be reagitated before the Executing Court.

So far as objection in para 3 of the application of the revisionist is concerned it did not at all receive the attention of the Executing Court. It appears that in execution of money decree sale proceedings were to be conducted and initially the sale was scheduled to be held on 16.12.1991. In pursuance of sale proclamation issued under order 21 rule 26 of the Code of Civil Procedure on 18.11.1991. However, the sale could not take place on 16.12.1991 in pursuance of sale proclamation issued under Order 21 Rule 26 of the Code of Civil Procedure on 18.11.1991. Sale was adjourned to 24.3.1992. Objection of the judgment debtor was that without issuing fresh sale proclamation subsequent sale could not be conducted. Reference has been made to Order 21 Rule 69 sub-clause (2) of the Code of Civil Procedure which provides that where a sale is adjourned under sub-rule (1) of rule 69 for longer period than 30 days fresh proclamation under rule 67 shall be made unless the judgment debtor consents to waive it.

In view of this mandatory provision it was the duty of the Executing Court to give its finding on second objection contained in para 3 of the objection filed by the judgment debtor. The revisional court without record cannot give abrupt finding whether second sale proclamation for the auction sale dated 24.3.1992 was issued or not. Ofcourse the question of judgment debtors

consent does not arise after this objection was filed by him. The impugned order therefore suffers from jurisdictional error. It has therefore, to be set aside. The revision therefore succeeds. However, for want of proper material this Court is unable to issue further direction. The matter has therefore to be remanded to the Executing Court for disposal of objection contained in para 3 of the objections filed by the judgment debtor. The Executing Court shall not reconsider the objection in para 2 of the said objection.

With the above observation the revision is allowed. Impugned order is set aside and the objections to the sale proceedings are remanded to the Executing Court for consideration and disposal of para 3 of the objection of the judgment debtor at an very early date. No order as to costs.

Sd/-

(D.C.Srivastava, J)

m.m.bhatt